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Letter dated 20 February 2001 from the Chargé d'affaires a.i. of the Permanent Mission of Israel to the United Nations addressed to the Secretary-General

I have the honour to enclose herewith the response by the Government of the State of Israel to the report of the United Nations High Commissioner for Human Rights contained in document A/55/684.

I should be grateful if you would arrange to have the text of this letter and its attachment circulated as a document of the General Assembly under agenda item 114 (e) (see annex).*

(*Signed*) Aaron **Jacob**
Ambassador
Chargé d'affaires a.i.

* The annex is being circulated in the language of submission only.

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Exhibit I - Video: *Orientation to the Present Conflict*

several human rights issues, without due reference to similar aspects, including of violations and other matters of human rights and humanitarian concern by the Palestinian Authority, and in the other countries in the region visited by the High Commissioner.

4. While Israel is the only democratic regime in the Middle East and is the only state in the region with extensive institutional protections and non-governmental checks and balances, this significant detail is omitted from the Report.

5. Moreover, the singling out of Israel directly diverged from express assurances of the High Commissioner for Human Rights and of the United Nations Secretary General to the Minister of Foreign Affairs, prior to the High Commissioner's visit to the region. In a meeting convened in New York in 2 November 2000, between the UN Secretary General and Israel's Minister of Foreign Affairs, the Minister was assured that the visit of the High Commissioner would not be undertaken pursuant to the Resolution adopted by the Commission on Human Rights at its fifth special session (S-5/1 of 19 October 2000). Similar assurances were offered by the High Commissioner herself to Israel's Permanent Representative to the United Nations in Geneva. Despite these assurances, the Report expressly refers to the aforementioned Resolution. Clearly, this deficiency places in question the motivation behind the visit, and the very objectivity of the Report. Israel has repeatedly expressed its absolute rejection of this unbalanced and offensive Resolution, and its rejection of the Resolution serving as a basis for the visit.

6. As detailed below, the Government of Israel offers a very different understanding of the causes of the violence and also makes some proposals that could reduce the violence and build trust between the sides. In fact, Palestinian leaders today openly admit that the causes of the violence have long been anticipated and planned by them, from the moment of return from

the Camp David negotiations. Thus, for example, on 5 December 2000, the Palestinian Minister of Communications, Imad Al-Falouji, addressed a symposium of the Journalists Association of Gaza. His remarks were reported in the Arabic daily newspaper *Al-Ayam* on 6 December 2000. Referring to the conflict, Mr Al-Falouji stated that the Palestinian Authority began its preparations for the outbreak of the current violence from the moment of return from the Camp David negotiations. According to Mr Al-Falouji, Yasser Arafat anticipated the eruption of the violence as a consolidation of the firm Palestinian stand in negotiations with Israel and not simply as a protest against Ariel Sharon's visit to the Temple Mount. The preparations for the Intifada began in accordance with Arafat's request.[1]

7. This has also been acknowledged by the High Commissioner in her speech before the special session of the Commission on Human Rights, on 17 October 2000, stating that "it appears that the crisis that led to the current situation began to emerge following the conclusion of the Camp David meetings, with popular frustration at the impasse that had apparently been reached in the negotiations".

8. While Israel deeply regrets the loss of life and suffering on all sides during the events of recent months, these events were not of Israel's making. Israel acted reasonably in response to the use of armed violence by Palestinians. Israel has made every effort, on all levels, to find a constructive way to bring the violence to an end.

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[1] *Al-Ayam*, 6 December 2000.

Part II

The Shortcomings of the UNHCHR's Report

a. Disregard of Context

9. The Report fails to examine adequately the situation within its appropriate context. There is virtually no reference in the Report to the circumstances of the conflict or to the countless acts of terrorism and violence by Palestinians against Israelis which included the use of live-fire acts of terrorism. While the Report acknowledges "that over an extended period, the right of Israelis to security of person (UDHR, article 3) has been threatened", and that this persistent insecurity has itself given rise to many of the human rights problems in the territories and Israel, it does not categorically deplore, as it should have done, the use of such Palestinian terrorist acts, which are aimed at an express violation of human rights, and the threatening of the security of Israel.

b. Fundamental Flaws

10. Israel considers that there are fundamental inaccuracies and shortcomings in the Report concerning the use of force. Those aspects raised with the High Commissioner that might have given a more balanced picture were ignored or otherwise unhelpfully brief. The Report lacks any presentation of the role played by the use of children in perpetrating violence, or of Palestinian live-fire assaults on Israeli troops and civilians. Furthermore, the Report attempts (para. 24) to draw a comparison between Israel's raising of concerns regarding Palestinian misuse of children in the conflict, and the official incitement on television and in the media by Palestinian officials to kill Israelis and Jews. The Report presents both on an equal footing, as examples of hate speech and incitement. This misrepresentation is particularly alarming and intolerable.

11. Throughout, the Report restates and accepts Palestinian feelings at face value, yet refutes the Israeli concerns one by one. It accepts without question the "deep hurt" (para. 24) experienced by the Palestinians caused by accusations of "forcing" children to participate in the violence. However, the Report does not present nor assess the wealth of evidence which shows how children have, in fact, been actively encouraged to become involved, nor does it raise the issue of official responsibility of the Palestinian authorities for these children's actions.

c. One-sidedness

12. The Report's rendering of Palestinian complaints is often accompanied by curious silences about human rights abuses by the Palestinians. For example, the Report criticizes the denial to Palestinians of "full access" to holy sites (para. 51-53), without offering any mention of the inability of Jews to reach their own religious sites in the territories controlled by the Palestinians, in violation of express agreement between the sides. In fact, the Palestinian desecration of Jewish holy sites in Nablus and Jericho are not even mentioned in the Report. It also overlooks the difficulties incurred by worshippers at the Western Wall in Jerusalem and Rachel's Tomb near Bethlehem, and the violation of their right to freedom of religion, due to Palestinian violence. While the Report actively "expresses concern" to the Israeli authorities on behalf of the Muslim and Christian clerics regarding their holy places (para. 53), the Report does not express similar concern to the Palestinians.

13. In addition, the Report fails to mention that, as part of the Palestinian provocation and the on-going heavy machine-gun attacks against Israeli civilians in Gilo, a residential neighborhood of Jerusalem, were deliberately launched from areas in proximity to churches and other Christian holy sites. This deliberate and cynical use of Christian sites is an effort to draw Israeli

fire that might damage Christian churches, residencies and lives, thereby provoking an international outcry from members of that community. This is clearly an attempt to exploit religious sensitivities against Israel. It is a dangerous attempt to inject religious confrontation into the Arab-Israeli conflict.

14. Regrettably, the Report dismisses with the briefest mention the summary and arbitrary execution of two Israelis in Ramallah, who were brutally tortured to death, mutilated and slaughtered by a Palestinian mob, orchestrated with the overall support of the Palestinian Police in a police station (para. 74). It does not go into any length or provide details regarding this horrific incident and the context in which it has been perpetrated, and the message it conveys to Israelis.

15. The Report describes in considerable detail the economic impact of closures on Palestinians in the territories. However, it does not acknowledge that these restrictions are a reaction to repeated terrorist attacks, and are taken for reasons of security in order to prevent further terrorist action. Instead, these aspects are described in isolation (para. 54-59), without context, as if they were unilaterally imposed by Israel to repress Palestinians. By contrast, the economic impact of the current situation on Israeli society is dismissed in one sentence (para. 60), stating that "it was clear that there have also been negative consequences for the Israeli economy".

16. Whereas the Report draws attention to regrettable incidents of death and injuries of Palestinian children, describing the effect of the present conflict on them, it fails to mention similar injuries to which Israeli children residing in the area are exposed to on a daily basis. Similarly, the Report fails to mention the impact of the situation on Israeli children, and the profound effects on their development, including educational difficulties and post-traumatic stress disorders.

d. Inclusion of Politicized Assertions

17. Regrettably, the Report makes politicized assertions, which not only diverge from the express task assigned by the High Commissioner's mandate, but also frequently prejudges issues which were agreed between the sides to be dealt with in direct negotiations between Israel and the Palestinians. Thus, for example, the Report's recommendation on the issue of settlements in the territories is a political one, which touches sensitive issues currently under negotiation between Israel and the Palestinians.

18. Another matter of concern in Israel's view is the recommendation made in the Report "to explore the feasibility of establishing an international monitoring presence" (para. 91). Israel has consistently maintained that it would be willing to consider the possibility of an international presence only as part of a permanent status agreement. Any such presence without a permanent status agreement would not proffer long term security and stability. On the contrary, such a presence could only be a source of conflict between the sides which would lessen its effectiveness, and would be used by the Palestinians to draw in international intervention in the hopes that some would be victimized in the midst of the violence, thus drawing the ire of their governments and supporters. It must be noted that the Palestinians initiated the violence and terror in breach of basic international norms, and specific obligations detailed in the various agreements with Israel. In addition, politically motivated monitoring forces would only add to intensify the tension by offering, as part of its unbalanced mandate, criticism of Israel without making parallel demands upon the Palestinians.

19. Far from contributing to a resumption of peaceful negotiations, Israel is concerned that the Report is being used to contribute to the creation of further polarization. In fact, the Palestinians have already misquoted provisions of the High Commissioner's Report in their papers submitted to

the Sharm el-Sheikh Fact-Finding Committee (30 December 2000). These discrepancies include the changing of words and descriptions of the High Commissioner[2], the changing of Palestinian reports of events into facts[3] and presenting details observed by the High Commissioner which received answers from Israel and were presented in her Report, but were conveniently ignored by the Palestinians[4]. In light of the above, it is to be regretted, that the Report of the High Commissioner is being abused as a weapon to achieve political gains, rather than as an instrument which could contribute to the resolution of the situation and enhancement of human rights.

20. It is important to recall that the Sharm el-Sheikh Fact-Finding Committee, established pursuant to the agreement reached with the Palestinians at the Sharm El-Sheikh Summit on 16-17 October 2000, is currently studying the events of the recent months. Headed by former U.S. Senator George Mitchell, the Committee's delicate task is to Report on the violence of the recent months, its causes and the policies and practices of the Parties, and to recommend ways of preventing the recurrence of violence in the future. In turn, Israel has expressed its faith in the Committee and its agreement to facilitate the completion of the Committee's task expeditiously.

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[2] In footnote 82 of the *Palestinian Second Submission of the PLO to the Sharm el-Sheikh Fact-Finding Committee*, the term "restriction" was replaced into a "total ban". Similarly, in footnote 83, the words "affect the import" became "deny the import", when in fact, Israel assisted the importing of humanitarian aid. In footnote 97 the Palestinians say that up to 11% of those injured were wounded by rocket attacks, while the Palestinian Minister told the High Commissioner (para. 32) that 11% of those injured were wounded by "other" means (including rockets)"; In footnote 94, the Palestinians noted "highly potent tear gas" grew from the High Commissioner's Report where the Palestinian Minister claimed about "tear gas"

[3] Thus, for example, Footnotes 91-94, 97 all quote figures from the same description of the Palestinian Health Minister in the High Commissioner's Report (para. 32). In the Palestinian Submission, however, it is no longer one side reporting to the High Commissioner, but using these figures as facts as if they were determined by the High Commissioner. Similarly, in notes 77, 84 and 87, the Palestinians turned into facts unsubstantiated claims that the High Commissioner was informed about. Additionally, often those figures are different than those quoted by the Minister to the High Commissioner. This is true in footnotes 91, 92, 93, 94 and 97.

[4] For instance, see footnotes 77 and 80 in the *Palestinian Second Submission to the Sharm el-Sheikh Fact-Finding Committee*.

21. Israel views with concern the UN High Commissioner's reference to the High Contracting Parties of the Fourth Geneva Convention relative to the Protection of Civilians in Time of War, suggesting that they "assume their responsibility under Article 1 of the Convention to ensure respect". It is worth noting that Israel alone, among the many states which have come into control of territories, has chosen to be guided by the humanitarian provisions of the Fourth Geneva Convention and to apply them to the territories under its control. Many other states belligerently occupying territory since World World II, have totally ignored its application. Particularly, in the light of the evolving situation in these areas, which are currently under on-going negotiations, Israel considers the aforementioned remark by the High Commissioner as inappropriate and politically inspired. Notwithstanding the above, it is also worthy to note that the drafting history of Article 1 and its subsequent commentaries, offer no legal support to the High Commissioner's recommendation. The Convention's authors never meant to suggest that Contracting States not party to an armed conflict are under such a positive international legal obligation to 'ensure' that belligerent parties respect the Conventions. This interpretation was added only recently, several decades following the entry into force of the Convention.

Part III

General Aspects of the Current Violence

a. The Causes of the Violence

18. While Israel is not suggesting that there is no wider context for the present violence within the Palestinian – Israeli conflict, it is, however, too simplistic to lay the violence of the past 137 days at the doorstep of that conflict in general terms. Although there have been incidents of violence in the period since the start of the Oslo process, progress towards a Permanent Status Agreement has proceeded in the absence of violence on the scale of that witnessed in recent months. The question, therefore, is what happened in the period prior to late September 2000 which acted as a catalyst for the recent events.

19. The significant developments in this period were the Camp David negotiations of July 2000, and the widespread appreciation in the international community that their failure was due to inflexibility on the Palestinian side. These were the immediate and principal catalytic events leading to the violence. Underlying this was a longer-term policy of the Palestinian leadership which effectively laid the groundwork for a campaign of violence to further the goal of the unilateral establishment of a Palestinian State.

20. A number of elements in respect of this appreciation call for further preliminary comment. First, contrary to the publicly expressed views of the Palestinian side that the cause of the violence was a spontaneous and popular reaction to the visit by Mr Ariel Sharon to the Temple Mount on 28 September 2000, this was not the case. While the Sharon visit may have been used as an excuse for the violence, it was not the cause. As has

already been suggested, the cause is deeper-rooted and predates Mr Sharon's visit by some time.

21. Second, as the preceding appreciation of the immediate causes of the events of recent months makes clear, the violence was instigated and coordinated; it was not spontaneous. It was also fanned, both in the period leading up to the commencement of the violence and during the course of the conflict, by incitement to violence and hostile propaganda which was articulated and encouraged by leaders and opinion makers in the Palestinian community – public and vociferous intonations to kill Jews and Israelis proclaimed by Imams at Friday prayers, incendiary descriptions of Israel and Jews in books introduced into the curriculum at Palestinian schools, including those for young children, calling for a religious conflict against Israel in the period following the breakdown of the Camp David negotiations, as well as other elements.

22. Third, not only was the violence nurtured, planned and prosecuted as an instrument of policy by the Palestinian leadership but key elements of the Palestinian security apparatus have actively participated in the violence. The violence, notably in its live-fire dimensions, thus has had all the characteristics of an armed conflict – live-fire attacks on a significant scale, both quantitatively and geographically; by a well armed and organised militia; under the command of a political establishment; operating from areas outside Israeli control; pursuing political aims.

23. Fourth, at its most basic level, the very fact of the violence attests to the failure on the part of the PLO and Palestinian Authority to take the steps that they committed themselves to in the agreements with Israel to forestall violence and terror. Far from acting to prevent violence, the PLO, the Palestinian Authority and the Palestinian Police have actively supported and directed the violence. Violence was a means to an end - the regaining

of the diplomatic initiative. The means to this end were the inevitable Palestinian casualties – inevitable because of the confrontational practices that would be pursued by the Palestinians.

b. Palestinian Hostile Propaganda and Incitement to Violence

24. Article XXII(1) of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (1995) provides that the Parties "shall seek to foster mutual understanding and tolerance and shall accordingly abstain from incitement, including hostile propaganda". Paragraph (2) of the same Article addresses hostile propaganda in the educational system, providing expressly that the Parties "will refrain from the introduction of any motifs that could adversely affect the process of reconciliation". These provisions are echoed explicitly in paragraph 2(b) of the Note for the Record of 15 January 1997 and in section II, paragraph 3 of the Wye River Memorandum of 23 October 1998. The obligations to take measures to preclude hostile propaganda and to refrain from incitement stand at the very core of the peace process.

25. Notwithstanding these commitments, hostile propaganda directed against Jews and Israelis, officially sanctioned, and of the most insidious kind, is all too evident. This is particularly so in the case of children. One example is that of a Palestinian children's television programme called the "Children's Club" which, through a "Sesame Street" formula involving interaction between children, puppets and fictional characters, encourages a hatred for Jews and the perpetration of violence against them in a "jihad" or "holy war".

26. These policies and practices of propaganda and incitement have been a central and on-going feature of the violence. The propaganda and

incitement has, however, been more extensive than the instances just highlighted suggest. For example, as is shown on the orientation video, frequently repeated broadcasts on Palestinian television exhort the Palestinian population to make molotov cocktails and store them in their homes as they would food. Prominent Palestinian leaders are shown on television and heard on radio making inflammatory speeches at funerals and elsewhere calling on the crowd to kill Israelis. Daily current affairs programmes call upon Palestinians to "continue the popular and noble actions". Other broadcasts call upon "the public to immediately take to streets in order to express its rage." These are all official statements, conveying the views of the Palestinian leadership. They are not the result of omissions on the part of the Palestinian Authority to control such broadcasts. This is an active policy of incitement to violence and hostility, characterized by an advocacy of national, racial, and religious hatred. It stands in blatant violation of the most basic norms and principles of international human rights law, but the High Commissioner for Human Rights chose to understate these details, simply saying that this "shocked" her.

c. The Nature of the Conflict

27. Since the outbreak of violence, there have been around 9,000 attacks by Palestinians against Israelis – civilians, police and military – virtually all life threatening. Of these, some 3,000 involved the use of automatic weapons, rifles, hand guns, grenades, or explosives of other kinds. Some 500 Israelis have been injured in these attacks and 52 killed. Around 322 Palestinians have been killed and around 9,000 injured. Although accurate figures are impossible to come by, independent sources have claimed that, of the Palestinians injured, around 20% have been injured by live-fire,

around 40% by rubber bullets and around 30% by the inhalation of tear gas. In around 10% of cases the cause of injury is unknown.[5]

28. Israel is engaged in an armed conflict short of war. This is not a civilian disturbance or a peaceful demonstration or a riot. It is characterised by live-fire attacks on a significant scale, both quantitatively and geographically – around 3,000 such attacks over the entire area of the West Bank and the Gaza Strip. The attacks are carried out by a well-armed and organised militia, under the command of the Palestinian political establishment, operating from areas outside Israeli control.

29. Fatah, the political-military grouping within the PLO answerable directly to Yasser Arafat, has a sizeable militia component of its own, the Tanzim. The Tanzim has been the mainstay of this conflict, distributing Molotov cocktails, organizing attacks, perpetrating violence. It has been the armed actions of the Tanzim that has enabled the Palestinian leadership to turn the present crisis into a confrontation on the scale of an armed conflict. Tanzim forces are charged with marshalling people for action, organising that action and distributing weapons such as molotov cocktails. They also provide the principal live-fire dimension to the Palestinian attacks.

30. Armed action by the Tanzim has gone hand-in-hand with the involvement of key elements of the Palestinian Police, particularly by its "Preventive Security Force" component in the Gaza Strip and by its "General Intelligence" component in the West Bank. Together, these militia have been responsible for attacks on both Israeli troops and civilians, including bomb attacks, such as the one on the children's school bus in Kfar Darom on 20 November 2000, and the frequent shooting incidents targeted at civilians in the West Bank.

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[5] See December 2000 report of *B'Tselem* into the recent events, at p.6.

31. By way of further example, the Tanzim, possibly acting with elements of the Palestinian Police, were responsible for infiltrating the IDF position at Kfar Darom on 18 November 2000 in which two Israeli soldiers were killed. They were responsible for an explosion at the southern District Coordination Office in the Gaza Strip on 23 November 2000 in which an Israeli soldier died. They were also responsible for the activation of a series of explosive devices in the Hebron area in October 2000 as well as the placing of a number of such devices in the Bethlehem area during November 2000.

32. In the majority of cases, Palestinian attacks against Israelis have taken the form of a large number of Palestinians, invariably in the hundreds and sometimes greater, usually including a live-fire dimension, attacking either a small number of Israeli civilians or a small number of Israeli troops. Typically, Israeli troops coming under attack have numbered fewer than 20. On many occasions, this number is lower. They have been extremely violent, leaving the intended Israeli targets in no doubt as to the fate that would befall them if they fell into the hands of their attackers.

33. Typically, their assailants have numbered in the hundreds. Stones, molotov cocktails, pistols, assault rifles, machine guns, hand grenades, explosives – these have been the Palestinians' weapons of war. They have taken place in areas from which Israel has been progressively withdrawing over recent years in accordance with the agreements concluded between the two sides as part of the peace process, generally in sites at which there is a limited Israeli presence. The attacks have thus involved the threat and use of lethal force by Palestinians against Israelis who have been both numerically and geographically vulnerable. In light of this reality, it is evident that this is clearly not a peaceful, non violent demonstration, nor a riot. Rather, it has been a calculated attempt to use violence as part of armed assaults

amounting to either terrorist or officially-sponsored initiatives to create new facts on the ground.

Part IV

Palestinian Policies and Practices

a. The Exploitation of Children and Their Military Training

34. Hostile propaganda and incitement to violence is particularly evident in the case of children. This message emerges from school books used in Palestinian classrooms in the current academic year (2000 – 2001), many of which were prepared by the Palestinian Ministry of Education. Thus, for example, a textbook entitled Muqarar al-Tilawa Wa'ahkam Al-Tajwid prepared for 5th graders, describes Jews as cowards for whom Allah has prepared fires of hell.[6] In a text for 8th graders, Al-Mutala'ah Wa'alnussus al-Adabia, Israelis are referred to as the butchers in Jerusalem.[7] Stories glorifying those who throw stones at soldiers are found in various texts.[8] A 9th grade text, Al-Mutala'ah Wa'alnussus al-Adabia, refers to the bacteria of Zionism that has to be uprooted out of the Arab nation.[9] The list is long and goes on in a similar vein.

35. One of the most disturbing elements of the conflict has been the active involvement on the Palestinian side of children in violent attacks directed against Israelis. This has included the practice of armed Palestinians firing at Israelis from within or behind crowds of demonstrators, including children. The Palestinian leadership, Palestinian Authority and Palestinian Police are under a positive obligation to restrain the involvement of children in such episodes. They have done virtually nothing towards this

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[6] *Muqarar al-Tilawa Wa'ahkan Al-Tajwid* ("Koran Recitement and Rules of Proper Reading"), at p.67.
[7] *Al-Mutala'ah Wa'alnussus Al-Adabia* ("Reading and Literary Texts"), at p.120
[8] See, for example, *Al-Tatbikat Al-Lughawiya* ("Language Exercises"), a textbook for 8th graders, at p.71.
[9] *Al Mutala'ah Wa'alnussus al-Adabia* ("Reading and Literary Texts"), at p.114 – 117.

end. On the contrary, there is evidence of active and long-term encouragement by the Palestinian leadership of the participation of children in the violence. Shockingly, the High Commissioner simply dismisses Israeli claims of this as "hurtful" remarks bordering on incitement.

36. In light of growing international concern about the inappropriate involvement of children in armed conflict, despite international prohibitions against this practice, the Palestinian leadership has actively developed a policy of military training for children in so-called "summer camps". During the summer of 2000, some 27,000 Palestinian children between the ages of 7 - 18 took part in such camps in both the West Bank and the Gaza Strip. These camps were funded by the Palestinian Authority. The largest of the camps were under the direction of Fatah, the principal military-political grouping of the PLO of which Yasser Arafat is the head. A common activity was preparation for armed conflict. Amongst other activities, the children were trained in the operation of firearms. These activities are detailed in the orientation video.

37. The summer camps are part of a wider practice which has seen children under the age of 18 "conscripted" into the Fatah militia – known as the Tanzim – as well as into special Fatah Youth cadres – known as the Shabibah. In this role, many of these children carry weapons and are trained in their use. The training of children as young as seven in military techniques and methods of violence constitutes a violation of basic international humanitarian norms and principles.

38. The involvement of children on the streets, in attacks against Israelis, is well-documented and visible to all. What is less evident is that the participation of children has often been actively procured by the Palestinian Authority. In many instances, the Political Guidance Department of the Palestinian Authority has made arrangements for children to leave school

especially for the purpose of taking part in the violent hostilities. The children are referred to in laudatory terms by Yasser Arafat and others within the Palestinian leadership as the "Generals of Stones" who "defeated the IDF Generals".

39. The role of the children is not simply as peaceful demonstrators nor even merely as violent stone throwers. Often, they carry and use weapons. The role of the stone throwers is also to act as human cover for the activities of armed Palestinian elements, such as the Tanzim, who invariably fire at Israelis with live ammunition from within or behind crowds of children. Leaving aside the causes of the conflict and questions of spontaneity, once the violence began it very quickly took on a familiar form, shaped by Fatah declarations and Tanzim organization.

40. This practice of conscripting children does not have universal approval in Palestinian circles. Palestinian mothers are increasingly vocal in their opposition to this element. As reported from Tulkarm on the West Bank in *USA Today* by Matthew Kalman on 8 December 2000, the Tulkarm Women's Union sent a letter of protest to Yasser Arafat demanding that the Palestinian Authority "stop using our children as cannon fodder".

> "Our children are being sent into the streets to face heavily armed Israeli soldiers ... The Palestinian Authority must put an end to this phenomenon. We urge you to issue instructions to your police force to stop sending innocent children to their death."[10]
>
> The report of the mothers' protest continues in the following terms:
>
> " 'We don't want to send our sons to the front line, but they are being taken by the Palestinian Authority,' says Aisheh, 43, a mother of six in the West Bank city of Tulkarm. She says she decided to speak out after

[10] "Let our kids alone, Arafat told", by Matthew Kalman, *USA Today*, 8 December 2000.

her 17-year-old son was hit in the head by a rubber bullet last week. He suffered concussion.

Like other protesting parents, Aisheh declines to allow her full name to be published for fear of reprisals. A nurse from Gaza who spoke out on Palestinian TV against sending children to the flash points was condemned in the Palestinian media as a traitor. Other individuals who refuse to allow their names to be published say they have been threatened by armed Fatah officials for discouraging their children from participating in the clashes.

...

Abu Sharif [a special adviser to Arafat] says Palestinian police are trying to dissuade children from taking part in the clashes with Israeli soldiers. He adds: 'These kids are on the streets. For them, banners and demonstrations are a festival.'

But Aisheh says the militia of Arafat's Fatah movement and the Palestinian security forces provide transportation and encouragement to children eager to answer the call to combat Israel's continued presence on Arab land."[11]

41. The involvement of children continues. Live-fire attacks by Palestinian gunmen operating from within "civilian" groups, including children, remains an accepted Palestinian *modus operandi*. This is clearly prohibited under international human rights and humanitarian law. Israel has already approached the Special Representative of the UN Secretary General for Children in Armed Conflict[12], the Executive Director of UNICEF[13] and the Chairperson of the Committee on the Rights of the Child[14] on this matter.

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[11] "Let our kids alone, Arafat told", by Matthew Kalman, *USA Today*, 8 December 2000.
[12] Letter of Israel's Permanent Representative to the UN in New York, 15 November 2000.
[13] Letter of Israel's Permanent Representative to the UN in New York, 27 October 2000.
[14] Letter of Israel's Permanent Representative to to the UN in Geneva, 8 November 2000.

b. Violence Directed Against Israeli Civilians

42. A significant feature of Palestinian policy in the present violence has been the active targeting by Palestinians of Israeli civilians who were in no manner involved in the conflict. This targeting of passive Israeli civilians in their homes, while traveling or while otherwise engaged in civilian pursuits detached from the conflict is a significant point of distinction between the practices of the two sides. Whereas Palestinian civilians injured by Israeli action have by-and-large been actively engaged or caught up in some manner in the confrontation with Israel, Israeli civilians injured in the conflict have in the overwhelming majority of cases been targeted merely because they were Israelis.

43. The pattern of attacks has been disturbing. Israeli residential areas have been the subject of on-going attack, often at night. The repeated attacks on Gilo, a residential neighborhood of Jerusalem, from Beit Jalla are the most clear-cut, but not the only, examples of such incidents. Invariably, these are attacks without warning in which civilians suddenly find themselves the targets, such as by a molotov cocktail thrown through a car window setting a baby on fire; a school teacher murdered on her way to classes, and the list goes on.

44. Perhaps most disturbing, but sadly not unfamiliar, has been the bus and car bomb attacks – the bombing of a children's school bus in Kfar Darom on 20 November 2000; the car bomb attack on a crowded street in Jerusalem on 2 November 2000; the car bomb in Hadera on 22 November 2000. In each case, the attacks were aimed at civilians, including children, and left many dead and wounded.

45. There is an element of brutality in all this. These are not civilians caught up in the cross-fire. These are not civilians actively engaged in some way

in the confrontation. These are simply innocent people targeted because they were Israelis. They were "soft" targets. They were victims of terrorism. Unfortunately, the targeting of such individuals has been an active element of Palestinian policy and practice over recent months.

c. The Use and Failure to Confiscate Illegal Weapons

46. The issue of illegal weapons and the failure by the Palestinian Police to confiscate them as required by the agreements with Israel, is another matter of concern. It should be recalled that the Interim Agreement and subsequent arrangements set agreed limits on both the numbers and types of weapons that could be legally held on the West Bank and the Gaza Strip. Both elements of these agreements have been breached. Illegal weapons in very significant quantities are held by the Palestinian Police, the Tanzim and other militia, and by the civilian population. These include: pistols, assault rifles and sub-machine guns, machine guns, hand grenades, rocket propelled grenades, grenade launchers, anti-tank missiles, shoulder launched anti-aircraft missiles, cannons and machine guns, mortars, mines, and high explosives.

47. As will by now be well known, one of the significant features of the violence of the past 137 days has been the live-fire attacks by the Palestinian side against Israelis. In many cases, Palestinian Police have participated actively in these attacks. In overwhelming measure, the weapons used by the Palestinians in these attacks have been illegal weapons, illegally held. The stockpiling of illegal weapons and the systematic failure on the part of the Palestinian Authority and the Palestinian Police to fulfill their obligations to confiscate these weapons has been a fundamental element in the groundwork for the present violence.

upper part had been shot at, and the head beaten so badly that it was a pulp, like a red jelly.

I thought he was a soldier because I could see the remains of the khaki trousers and boots. My God, I thought, they've killed this guy. He was dead, he must have been dead, but they were still beating him, madly, kicking his head. They were like animals.

They were just a few feet in front of me and I could see everything. Instinctively, I reached for my camera. I was composing the picture when I was punched in the face by a Palestinian. Another Palestinian pointed right at me shouting 'no picture, no picture!', while another guy hit me in the face and said 'give me your film!'.

I tried to get the film out but they were all grabbing me and the one guy just pulled the camera off me and smashed it to the floor. I knew I had lost the chance to take the photograph that would have made me famous and I had lost my favourite lens that I'd used all over the world, but I didn't care. I was scared for my life.

At the same time, the guy that looked like a soldier was being beaten and the crowd was getting angrier and angrier, shouting 'Allah akbar' – God is great. They were dragging the dead man around the street like a cat toying with a mouse. It was the most horrible thing that I have ever seen and I have reported from Congo, Kosovo, many bad places. In Kosovo, I saw Serbs beating an Albanian but it wasn't like this. There was such hatred, such unbelievable hatred and anger distorting their faces.

The worst thing was that I realised the anger that they were directing at me was the same as that which they'd had toward the soldier before dragging him from the police station and killing him. Somehow I escaped and ran and ran not knowing where I was going. I never saw the other guy they killed, the one they threw out of the window.

I thought that I'd got to know the Palestinians well. I've made six trips this year and had been going to Ramallah every day for the past 16 days. I thought they were kind, hospitable people. I know they are not all like this and I'm a very forgiving person but I'll never forget this. It was murder of the most barbaric kind. When I think about it, I see that man's head, all smashed. I know that I'll have nightmares for the rest of my life."[15]

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[15] Mark Seager, "I'll have nightmares for the rest of my life", *The Sunday Telegraph*, 15 October 2000

51. An Italian film crew was present in the Ramallah police station. It caught on film the unrestrained brutality of the initial attack. The images are horrific. The full sequence has not been released to the public out of sensitivity for the families of the victims and in order not to inflame the situation further. Israel is in possession of additional evidence which portrays the horror of this event, showing how Palestinian police were in active complicity and failed to take any steps to prevent the atrocities.

52. The summary and arbitrary execution, torture and mutilation of the two Israeli reserve soldiers in Ramallah on 12 October 2000 left no-one in doubt about the nature of the threat faced by Israelis. The destructive intent shown by Palestinians to Jewish Holy Sites in areas under Palestinian control further illustrates the violent and aggressive attitudes that appears to underlie the Palestinian attacks. These events have not been a peaceful protest. They have been unrestrained violent attacks of the utmost ferocity, conveying clear signals of the nature of the threat faced by Israelis.

e. Hostile Propaganda and Incitement to Violence

53. In the context of the preceding review of the causes of the violence, reference was made to children's television programmes broadcast on Palestinian television and to books in use in Palestinian schools. The material on these elements is extensive and can be developed in detail. In the context of describing what happened, reference was made to sermons by Muslim clerics during the course of Friday prayers. An extract from one such sermon is shown on the orientation video attached hereto as Exhibit I.[16] This material, too, is extensive and can be developed in detail. Reference has also been made to the training of children at so-called

[16] Exhibit I: *Orientation Video*, at clip n.6.

"summer camps", activities that have as an integral dimension the incitement of children to hatred and violence against Jews and Israelis. A BBC film clip of these camps is included on the orientation video.[17] Finally, reference has been made to Fatah declarations and Hamas communiques which call upon Palestinians to attack Jews and Israelis.

f. The Unwarranted Release of Terrorist Detainees

54. The Palestinian Authority is under an obligation to detain those involved or suspected of involvement in attacks against Israelis. In practice, however, it has pursued a "revolving door" policy, releasing convicted or suspected terrorists soon after arrest. 80 or so were released immediately after the start of the violence. The unwarranted release of persons suspected or found guilty of complicity in acts of violence and terror increased significantly in the period following the breakdown of the Camp David negotiations on 25 July 2000 and, to the point of the start of the violence in late September 2000, included the release of over 50 members of Hamas, Islamic Jihad and the Popular Front for the Liberation of Palestine ("PFLP") who had been involved in attacks against Israel and Israelis. In very many cases, those released have played an active role in the violence.

55. This unwarranted release of such detainees sends a message to the Palestinian community that terrorism is acceptable, even desirable. More than that, it releases into the community individuals who are committed to pursuing such a course of action and who have the experience and capability to do so. The release of these detainees involves a fundamental breach by the Palestinian Authority of its commitments under the various agreements concluded with Israel, and amounts to active incitement to

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[17] Exhibit I: *Orientation Video*, at clip no 4

terrorism and violence. In freeing these people and enabling and thereby encouraging them to resume their attacks on Israelis, the Palestinian leadership is violating its obligation to provide protection from arbitrary acts of violence aimed at the violation of human rights. This aspect has been completely ignored by the High Commissioner's Report, without any comment.

g. Attacks on and the Destruction of Jewish Holy Sites: Freedom of Religion

56. Under the Agreements between Israel and the Palestinians there is an agreed special status of various Jewish Holy Sites situated within areas under Palestinian control, including notably Joseph's Tomb in Nablus and the Shalom al Yisrael Synagogue in Jericho. In the case of these sites, subject to special arrangements allowing for a limited Israeli security presence, their protection and the preservation of Israeli citizens' freedom of religion, was the responsibility of the Palestinian Police. Other sites of importance for present purposes include in particular Rachel's Tomb on the outskirts of Bethlehem.

57. In the case of Joseph's Tomb in Nablus, the site was the target of violent attack from the outset by armed militia, including members of the Palestinian Police, accompanied by significant numbers of stone throwers and others. In one such attack, on 1 October 2000, an Israeli border policeman, Madhat Yosef, was severely injured. He subsequently bled to death following the refusal by Palestinian officials to allow his medical evacuation and the decision by Israeli troops to hold back from entering the area to affect a rescue in order not to inflame the situation further.[18]

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[18] The IDF Commander who took the decision not to send in a rescue force subsequently explained the decisions as follows: "If we had sent in tanks and heavy weapons to take out a wounded soldier, it would not only have caused an escalation in events, but imagine how it would look to the rest of the world." (*Jerusalem Post*, 3 October 2000)

58. With a view to reducing tension in the area, an agreement was subsequently reached between the IDF and the Palestinian Police whereby the few Israeli personnel on duty at the site would be withdrawn and the Palestinian Police would ensure the site's continued protection and preservation.

59. Following the withdrawal of the Israeli personnel on 7 October 2000, the site was overrun with the support of the Palestinian Police. The Tomb was set ablaze and severely damaged as Palestinians attempted physically to destroy it stone by stone. Holy relics were burned. The Tomb was painted green, a color holy to Islam, in preparation for turning the site into a mosque. It was only in the face of widespread international condemnation that this egregious violation of religious freedom was halted.

60. A similar situation occurred with the Shalom al Yisrael Synagogue in Jericho which was the target of attack on 12 October 2000. The Synagogue was sacked. Holy books and relics were publicly burned. An ancient mosaic was damaged.

61. In the case of Rachel's Tomb, although this is not situated in an area under Palestinian control, it directly abuts the Palestinian city of Bethlehem, an area which is fully under Palestinian jurisdiction. While Israel retains security responsibility for Rachel's Tomb, the constant shooting by Palestinian snipers, rock throwing and general violence in the direction of the Tomb from Palestinian controlled areas has made access to the site impossible.

62. In this review, account must not be left out of the Western Wall, the holiest site of Judaism, situated at the foot of the Temple Mount. Following the outbreak of violence at the Temple Mount on 29 September 2000, the area of the Western Wall was the subject of violent attack by some of the 22,000 members of the congregation at Friday prayers. On the eve of the Jewish

new year, the area of the Western Wall had to be evacuated of Jewish worshippers. Following the attack, the entire area was virtually carpeted in rocks. Again, this matter received no mention in the High Commissioner's Report.

63. The attacks on and destruction of Jewish Holy Sites has been another deeply disturbing element of Palestinian policy and practice in the course of the recent violence. There is no doubt that it has been orchestrated and has had official sanction. These attacks have sent a signal to Israelis and to Jews throughout the world that the Palestinians are not interested in coexisting with Israel. They are not concerned with respecting the freedom of religion of the Jewish worshippers. They are intent on destroying that which is most holy to Judaism. They give tangible expression to the calls, broadcast repeatedly on the Palestinian media for a jihad, a holy war, against the Jews.

h. The Abuse of Protective Symbols and of Accepted Principles Relating to the Relief of the Wounded

64. There have been many allegations throughout this conflict of the abuse of protective symbols and of accepted principles relating to the relief of the wounded. One such case is that just mentioned of the Israeli border policeman who was wounded in the Palestinian attack on Joseph's Tomb in Nablus on 1 October 2000. As a consequence of the refusal by the Palestinian Police to allow his medical evacuation, he bled to death.

65. Israel has been very disturbed by other incidents of a similar nature as well as of the serious abuse by the Palestinian side of the Red Crescent relief symbol. On 31 October 2000, gunfire was directed at the Israeli settlement

of Psagot from inside the Red Crescent building in Ramallah.[19] In other incidents, Palestinian Red Crescent ambulances were used to bring armed Palestinian militia and police to the frontline in the course of gun battles between Palestinian militia and Israeli soldiers. In yet other cases, ambulances carrying the Israeli Magen David Adom (Star of David) symbol have been the target of attack.

i. Conclusions Regarding Palestinian Practices

66. In overview, the policies and practices of the Palestinian side in the present conflict have had a number of significant and highly disturbing features. They have involved significant live-fire attacks by heavily armed militia, at times with support from Palestinian policemen, often from within or behind crowds of stone throwing "civilians", including children. The scope and severity of these attacks have effectively turned the confrontation into an armed conflict. Children have been used quite consciously as part of the campaign." Attacks have been targeted directly at Israeli civilians otherwise entirely uninvolved in the confrontation. Attacks have also exhibited a brutality that has conveyed clear signals of the nature of the threat faced by Israelis. This has been reinforced by the destruction of Jewish Holy Sites.

67. All of these actions amount to violations of basic international human rights and humanitarian norms, violations of the right to life and security of a person, prohibitions against incitement to violence and hatred, and misuse of powers and responsibilities by the Palestinians which have been entrenched in various agreements signed with the Palestinians. Thus, for example, under Article XIX of the *Israeli-Palestinian Interim Agreement*

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[19] See Press Release, 1 November 2000, *IDF Condemns Palestinian Use of Red Crescent Facilities to Shoot at Psagot*

on the West Bank and the Gaza Strip, the Palestinians are obliged to exercise their powers and responsibilities with due regard to internationally accepted norms and principles of human rights and the rule of law. Similarly, under Article II (C)(4) of the *Wye River Memorandum*, the Palestinian Police is obliged "to exercise its powers and responsibilities with due regard to internationally accepted norms of human rights and the rule of law, and be guided by the need to protect the public, respect human dignity and avoid harassment".

68. The groundwork for these actions has been laid, directly or indirectly, over a long period of non-compliance by the PLO and the Palestinian Authority with their obligations under the various agreements with Israel and their obligations under international humanitarian and human rights norms and principles – the use of hostile propaganda and incitement to violence, the military training of young children, the amassing of an armory of illegal weapons, the release of terrorist detainees. Israel has not initiated confrontation. It has responded in self-defence.

Part V

Israeli Policies and Practices

a. General

69. Israel, for its part, has made a sustained effort in pursuit of promoting the peace process in the Middle East, in the belief that a real opportunity had presented itself, that must be seized. Israel did not seek the present confrontation. It was, and continues to be, fomented and sustained by the Palestinian side. Within the severe constraints of the events of recent months, Israel's actions have been directed toward containing the confrontation, protecting persons not directly involved in the conflict and their property, and avoiding causalities to its military and police personnel in the performance of their task. Throughout, Israel has been concerned to minimize serious injury to those actively engaged on the Palestinian side, and to protect civilians who take no part in the hostilities.

70. The key to a balanced appreciation of the circumstances that have prevailed over the past 137 days is that the live-fire dimension of the Palestinian attacks have decisively taken containment of the conflict out of the realm of civilian riot control. For present purposes, the issue is simply that, in the face of live-fire attacks, non-lethal methods of containment cannot be effectively deployed.

71. In the Gaza Strip, most of the major flashpoints of conflict have occurred on roads used by Israeli military forces and Israeli civilians. Attacks by Palestinians have also occurred at and around Israeli communities and around IDF positions. In most cases, the Palestinian attacks have taken place some distance from Palestinian centers of population. The same

pattern has largely been replayed in respect of other points of conflict. Attacks have occurred on roads and at junctions, settlements and IDF positions that in the main have been relatively removed from Palestinian centers of population. Incidents have taken the form of large numbers of Palestinians, frequently armed, traveling to attack small numbers of relatively isolated Israeli civilians or troops. The attacks have not taken the form of peaceful protest or even symbolic stone throwing and protest. They have left the Israeli targets of the attacks in no doubt that, absent firm resistance, their fate was likely to be the same as that of the two Israeli reserve soldiers tortured and arbitrarily executed in Ramallah.

72. In many cases, attacks have been initiated against Israelis from within Palestinian controlled areas. Attackers who have proceeded outside these areas have invariably retreated into these areas subsequently. Given the status of these areas, Israel has not pursued these attackers or been in a position to take effective steps to prevent such attacks.

73. Against this background, the conduct of Israeli forces have been in conformity, and have gone far beyond, with international standards. Indeed, Israel's forces have shown utmost restraint throughout these incidents. Save in exceptional circumstances, Israeli forces – police and military – have not initiated confrontation. They have only acted when confronted by an immediate threat to life or limb as a result of attacks by Palestinians. In so doing, they have acted as mandated by necessity, in self-defence or in the defence of others.

74. The principal exception to the policy of not initiating confrontation has been in specific circumstances in which Israeli forces have acted proportionately in response to a Palestinian attack but have targeted a point distinct from that of the immediate source of the initial Palestinian attack. By way of example for present purposes, Israeli forces attacked the Fatah

confrontations such as those which took place in recent months. In such circumstances, there is a real threat to the lives of military and police personnel. Even assuming that steps can be taken to reduce such threats by the use of protective measures such as body armor, such personnel cannot get within sufficient range to engage in traditional riot control measures.

78. Before leaving this element, it ought to be emphasized that Israel is not seeking to downplay the scale of the casualties in the present conflict. Nor, it must also be emphasized, is Israel suggesting that individual instances of excessive response may not have occurred. To a soldier or a unit coming under Palestinian attack, the equation is not that of the Israeli army versus some stone throwing Palestinian protesters. It is a personal equation. A few, often geographically isolated, Israeli troops are under attack by Palestinian militia operating from within a sizeable and invariably extremely violent "civilian" contingent that is intent on causing injury and death.

79. Infractions of Rules of Engagement and codes of conduct are treated severely. Where Israel considers that there is reason to investigate particular incidents, it does so, although given the circumstances of armed conflict, it does not do so routinely. The IDF and the Israeli political establishment do not condone and will not overlook excessive and unreasonable use of force by its troops. At the same time, Israel will not lightly question the judgment of its troops under attack.

80. The issue of alleged unlawful action by Israeli settlers against Palestinians also requires comment. There have been a number of allegations by Palestinians of criminal conduct on the part of Israelis, invariably in the vicinity of Israeli settlements in the West Bank and Gaza Strip. These include attacks on Palestinian vehicles causing personal injury and damage, live-fire attacks against Palestinians resulting in death and injury, and the destruction of property. All such allegations are investigated. Israel will have no truck with criminal activity on the part of its nationals. In a

number of cases to date, suspects have been remanded in custody pending trial.

b. The Use of Force by Israel

81. There are four issues that warrant comment in respect of the use of force by Israel in the context of the present conflict: (i) the shortcomings of non-lethal means of containment, (ii) the means deployed by Israeli forces, (iii) the issue of targeting, and (iv) the use of heavy weapons such as tanks and helicopters. These issues are addressed in turn below.

82. As has been previously mentioned, the present conflict is characterized by live-fire attacks by Palestinian militia, including, often, from elements of the Palestinian Police, against Israeli civilians and civilian targets and Israeli forces. These attacks have involved the use of pistols, assault rifles, sub-machines guns, machine guns, grenades and explosives. There have been around 3,000 such attacks over the course of the conflict in the 137 days since the violence began.

83. The live-fire attacks invariably take place from within or behind groups of "civilians". The usual *modus operandi* of the incidents involves an attack by a sizeable Palestinian contingent against small numbers of Israelis, often geographically isolated. Most of the attacks involve the Palestinian contingent traveling to "engage" their intended Israeli targets. Many of the attacks are brutal in their methods and outcome.

(i) The Shortcomings of Non-lethal Means of Containment

84. A central element of the accusation that has been leveled against Israel is that it did not use – or made insufficient use of – non-lethal means of

containment with the consequence that many Palestinian injuries that might otherwise have been avoided in fact occurred. However, this claim is entirely incorrect. Where possible, Israel has deployed non-lethal means. This has not always been possible. More important is the fact that virtually all of the non-lethal means available are ineffective and unsuitable for use in the kind of conflict prosecuted by the Palestinians. The one exception to this is the use of rubber bullets. These have been widely employed by Israeli forces. However, as the circumstances of the present conflict attest, the use of rubber bullets can in some circumstances be lethal.

85. The nature of the present conflict has posed two related difficulties for Israel in its attempt to contain the violence and minimize casualties. First, the use of live-fire by the Palestinians has effectively meant that Israeli forces have had to remain at some distance from those initiating the violence. Second, the threat of force against Israelis has been a threat of lethal force. Both factors have inhibited the use of traditional methods of riot control. Coupled with this, intrinsic, technical shortcomings or problems associated with the use of available non-lethal means has significantly limited the options open to Israel.

86. In the light of concerns over the possibility of a violent confrontation with the Palestinians, and with the object of avoiding large-scale loss of life and serious injury, Israel has investigated the availability of effective non-lethal means of containment very closely. Israel has come to the conclusion that the available means are either fundamentally unsuited to a live-fire conflict having the characteristics of the present confrontation or that their use poses a substantial risk of death or serious injury such as to preclude deployment. It is the nature of the Palestinian attacks against Israelis that has very largely determined the range of available responses open to Israel. In circumstances in which the use of non-lethal means has been possible

and would be likely to be effective, this option has been followed. The claim, however, that a greater use of non-lethal means by Israel would have been effective either in containing the conflict or in reducing the number of casualties beyond current levels, is not at all based upon actual facts and circumstances.

(ii) The Means Deployed by Israeli Forces

87. An essential characteristic of the present conflict is that Israeli civilians and armed forces have been attacked by Palestinians. In some circumstances, such attacks have been anticipated and it has been possible for Israel to plan defensive measures. In many cases, attacks have not been predictable and it has accordingly been less easy to plan a response. In a few instances, Israel has initiated action in response to a direct attack from the other side.

88. Where it has been possible to anticipate an attack, the circumstances are such that non-lethal means are likely to be an effective response, and where such means have been available to the troops concerned, Israel has employed such means. Overwhelmingly, the non-lethal means used have been tear gas and rubber bullets. As will be appreciated, the use of such means is not free from risk and in many cases injuries have resulted. In the main, such injuries are unlikely to have been life threatening or to have caused any long term disability. Although accurate figures are impossible to come by, independent sources have suggested that around 70% of Palestinian injuries have been caused by the use of rubber bullets (40%) and tear gas (30%).[20] Assuming, for present purposes, the broad accuracy of these percentages, this is consistent with the proposition that Israeli forces have wherever possible used non-lethal means of containment.

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[20] See the December 2000 Report into recent events of the Israeli human rights group *B'Tselem*, at p.6.

89. Where Israeli forces have come under attack and the circumstances have been such that the use of non-lethal means has not been possible – surprise attack, the likely ineffectiveness of non-lethal means, the risk of serious injury by their use, or their lack of availability – they have acted in self-defense by the use of live-fire. The use of such measures has been consistent with the scale of the threat and the nature of the attack. In all cases, IDF activities have been governed by an overriding policy of restraint, the requirement of proportionality and the necessity to take all possible measures to prevent harm to innocent civilians.

(iii) Rules of Engagement and the Issue of Targeting

90. Notwithstanding the fact that the present confrontation is one of armed conflict short of war, the IDF took a decision at an early stage not to significantly revise the rules of engagement that had applied to the operation of Israeli forces in the West Bank and the Gaza Strip prior to the commencement of the violence. This authorized the use of weapons solely in life-threatening situations or, subject to significant limitations, in the exercise of the arrest of an individual suspected of having committed a grave security offence. This being said, some revision of the rules of engagement was undertaken to reflect the reality of the circumstances faced by Israeli troops. In addition, clarifications were made with regard to the definition of life threatening situations. In all cases, IDF activities have been governed by an overriding policy of restraint, the requirement of proportionality and the necessity to take all possible measures to prevent harm to innocent civilians, pursuant to its obligations under international humanitarian law.

91. Pursuant to its applicable rules of engagements, Israeli troops have responded to those who have initiated attacks against Israeli civilians or

forces or those who have been about to initiate such attacks. In a number of cases, Israel has initiated action against Palestinian command and control positions relevant to the conduct of attacks against Israelis. As previously observed, in a limited number of cases, Israel has focused such action on points geographically distinct from the source of the original attack, an initiative permitted under accepted rules relating to targeting in armed conflict.

92. Two allegations that have been made arising out of the present conflict are that injuries appear frequently to have been caused to the upper body of the injured and that children and others have been killed by the use of rubber bullets. A number of observations on these allegations are warranted. First, it is important to state that Israel has no way of knowing whether these allegations are true and, if they are, the numbers involved in each case. The observations that follow proceed on the assumption, for purposes of this analysis, that the allegations have some basis.

93. Second, the allegation that injuries have been caused to the upper body of those injured forms an essential basis for the claim that Israel has used excessive force; that it has set out to kill or seriously injure the persons concerned.

94. Those who make this allegation have a fundamental lack of appreciation of the circumstances. The reality is that, where such injuries have occurred, they are likely to have occurred in highly fluid situations of extreme threat, involving heavy exchanges of gunfire, often over extended periods, in which the person injured is likely to have been moving actively at the point at which the injury was sustained. To these elements must also be added other complicating factors such as distance, limitations on the accuracy of weapons, etc.

95. With these factors in mind it is incorrect to suggest that injuries sustained to the upper body indicate an intention to kill or cause serious injury. Such injuries illustrate little apart from the severity of the battle in question.

96. Third, as to the allegation that children and others may have been killed by rubber bullets, sadly, this is possible, but not intended. As has already been observed, rubber bullets may be lethal in some circumstances such as at close range or if they strike at particular points on the body.

97. The reality is that rubber bullets are an imperfect means of containment. They are designed to minimize the risk of serious injury but they cannot alleviate it altogether. The reality is that in the overwhelming majority of cases rubber bullets do not cause death or serious injury. In many circumstances, they may be the only available option short of live-fire. Children using guns, or intent on causing injury or death to their intended target by some other means, pose a lethal threat. Particularly when that threat takes the form of large-scale attack, there are few choices when it comes to containment.

98. Fourth, it is worth observing that, in the midst of confrontation, it is often impossible to distinguish older children from adults. This is the hazard of a conflict involving militia forces which operate without uniforms or other distinguishing elements.

(iv) The Use of Heavy Weapons

99. In a few instances, Israel has initiated action in response to a direct attack from the other side. In a limited number of cases the IDF has resorted to the use of helicopters and tanks. These have been exceptional measures, which have invariably followed attacks of particular brutality by the Palestinian side such as the summary and arbitrary execution, torture and

mutilation in Ramallah and the Kfar Darom bus bombing. The attacks were in many cases preceded by warnings for purposes of avoiding injury. Most cases in which tanks have been used have involved the use of so-called "hollow" shells designed to minimize personal injury. A number of observations are warranted about the use of such weapons.

100. First, such weapons are used because of their particular accuracy. In contrast, for example, to the use of aircraft where the potential for damage beyond the immediate confines of the target (so called "collateral damage") is greater, tanks and helicopters are able to pinpoint targets with precision. Their use is therefore designed to minimize injury in circumstances in which a higher scale of response is warranted by the level of the initial Palestinian attack.

101. Second, in many cases, the IDF gave timely and detailed warnings of impending action of this nature with the aim of forestalling personal injury. By-and-large, the intention of such attacks has not been to cause injury. It has been to destroy command and control centers or other military targets and to send a signal of Israeli capability to the Palestinian leadership. In the light of such warnings, many of these attacks have resulted in no or only minimal injury.

102. Examples of actions in which warnings were provided include the helicopter attacks on the Fatah Headquarters in Bet Lahiya on 12 October 2000 and on the police station in Ramallah in which the two Israeli reservists were lynched earlier that day. In both cases, the targets were damaged. There was no loss of life. In another case, the Fatah office in Nablus was attacked on 30 October 2000 following a Palestinian terrorist attack in Jerusalem and the discovery of the body of an Israeli civilian near Gilo. Warnings were given. There was no loss of life.

103. Third, most of the cases in which tanks and helicopters have been used have been in response to on-going live-fire attacks against Israeli soldiers and civilians carried out from buildings or other fortified locations. In such circumstances, the use of such weapons is the only effective way in which to respond.

104. Fourth, as regards the use of tanks, in many cases in which this has occurred the ammunition used has been so-called "hollow shells", that is to say, shells in which the charge does not have a radius effect over a wide area therefore minimizing the risk of personal injury. The object of these actions has been to destroy locations from which attacks have taken place with the minimum risk of personal injury.

Part VI

Conclusions

105. The Palestinian resort to violence from late September 2000 was in significant measure the result of an orchestrated campaign by the Palestinian leadership. The immediate objective of this action was to neutralize and counteract the widely held appreciation in the international community of Palestinian responsibility for the failure of the Camp David negotiations and the virtually uniform international reaction in the run-up to Mr. Arafat's 13 September 2000 deadline for the unilateral declaration of a Palestinian state counseling against such a step.

106. More widely, the violence has been part of a nurtured policy of the Palestinian leadership pursued with the deliberate intention of provoking and incurring Palestinian casualties as a means of regaining the diplomatic initiative. It also served to alleviate both internal and wider Arab pressures on the Palestinian leadership and re-enlist the support of the Arab world in the Palestinian dispute with Israel. Key elements of Palestinian policies and practices in the course of the present conflict include the live-fire dimension of the conflict, the nature and in many cases the brutality of the attacks, the targeting of Israeli civilians, the initiation of attacks against Israelis from within Palestinian civilian locations, hostile propaganda and incitement to violence, the training and involvement of children, the availability and use of illegal weapons, and the release of terrorist detainees.

107. Not only was the violence nurtured, planned and prosecuted as an instrument of policy by the Palestinian leadership but key elements of the Palestinian security apparatus have actively participated in the violence. The violence, notably in its live-fire dimensions, thus has had all the

characteristics of an armed conflict – live-fire attacks on a significant scale, both quantitatively and geographically; by a well armed and organised militia; under the command of a political establishment; operating from areas outside Israeli control; pursuing political aims.

108. The failure by the Palestinian side to fulfil its human rights and humanitarian obligations – in respect of security; the use of illegally held weapons; the active involvement of elements of the Palestinian Police in attacks on Israelis; the incitement to hatred and violence, including by official Palestinian elements; the destruction of Israeli Holy Sites in areas under Palestinian control; the release from detention of Palestinian terrorists; as well as other actions – violate the very core of the commitments assumed by the Palestinian side in recent years in the context of the peace process, all of which constitute human rights violations. Israel has not initiated confrontation. It has responded in self-defense.

109. Israel's principal concern in the peace process has been the security of its civilians, as is the responsibility of any government. This issue is of overriding importance. The Israeli population has been subject to attack from the earliest days of the State. Often, notably in the case of terror attacks, such incidents have exhibited a dimension of unrestrained brutality. The summary and arbitrary execution, torture and mutilation of the two Israeli reserve soldiers in Ramallah on 12 October 2000 illustrates this. The failure of the Palestinian side to comply with both the letter and the spirit of the security provisions in the various agreements has long been a source of disturbance in Israel. The events of recent months have sharply accentuated these concerns.

110. Of particular relevance in this context, the obligations of the Palestinian side in respect of security and human rights include: a commitment to a peaceful, negotiated process to resolve the conflict between the two sides;

the renunciation of terrorism and violence; action by the Palestinian Police to combat terrorism and violence; protection by the Palestinian Police of those falling within the scope of their jurisdiction; the control of illegal weapons; agreed limitations on Palestinian Police numbers and munitions; the active prevention of incitement to violence and hostile propaganda; action to ensure that the Palestinian educational system does not adversely affect the process of reconciliation; the arrest and prosecution of persons suspected of perpetrating acts of violence, terror and incitement; safeguarding of Jewish Holy Sites in areas under Palestinian control; the operation of joint security and other coordinating committees as a means of effective compliance.

111. Given the recent events, Israel considers it essential that the Palestinian side reaffirm its clearly stated and documented obligations to renounce the use of force in its relations with Israel, as it moves towards an overall settlement of the conflict. The basic commitment underlying the Oslo Process was expressed in the Exchange of Notes between Israeli Prime Minister Yitzhak Rabin and PLO Chairman Yasser Arafat in which the PLO committed itself "to a peaceful resolution of the conflict between the two sides" and declared that "all outstanding issues relating to permanent status will be resolved through negotiations".

112. Israel continues to maintain that there can be no resort to violence in order to solve issues in dispute or further political interests. Measures designed to prevent the use of violence and to apprehend and prosecute individuals involved in incitement and in the perpetration of or conspiracy to commit acts of violence must therefore be enforced. Previously agreed, on-the-ground arrangements, which were specially devised by the two sides to uphold security and to maintain security cooperation and coordination, must therefore be reinstated and reinvigorated.

113. It should be understood that the point of departure for any positive change in relations between Israel and the Palestinians must be the achievement of a durable cessation of violence. In this connection, Israel considers that the Palestinian side must adopt certain concrete steps designed to send a clear message of intent both to the Israeli leadership and the general public. These measures would include the following:

(a) a publicized reaffirmation by the Palestinian leadership, both written and spoken, affirming its commitment to resolve disputes with Israel by peaceful means, including a clear renunciation and denunciation of any recourse to violence and terrorism;

(b) the institution of measures to:

- stop and prevent the para-military training of youth and children;
- collect weapons held in contravention of agreements with Israel;
- return to prison persons involved in terrorist activities against Israel; and
- resume preventive security cooperation with Israel;

(c) an obligation to institute active steps to prevent anti-Israel and anti-Jewish incitement in the media, in places of worship and in educational institutions. These steps must be accompanied by a conscientious attempt to institute and encourage the widespread dissemination of values and principles supporting peaceful resolution of disputes. In this context, it is suggested that both Parties work together to enhance the dialogue and relations between their peoples within the framework of

the People-to-People Programme established under the *Interim Agreement*;

(d) the reduction of the Palestinian Police to the agreed limit of 30,000. There must be both an official and popular cessation of all training of a military nature undertaken by members of the Palestinian Police. The role of this force is solely to maintain internal security and public order, and

(e) a reaffirmation of its commitment to respect the religious beliefs, the worship practices and the Holy Sites of all persons, including the right to enjoy unimpeded access to their Holy Places.

118. The Government of the State of Israel remains committed to seek a lasting and comprehensive peace with its neighbours through direct negotiations. Peaceful negotiations conducted in an atmosphere of mutual trust and respect, compromise, communication and reconciliation are key elements to achieve this vision. But for peace to endure, it must be based on two principles: security and reciprocity.

119. Given the above, it is evident that the High Commissioner's Report fails to examine adequately the situation within its appropriate context. Its shortcomings in the assessment concerning Israel's use of force are evident, and the political assertions made therein not only diverge from the task assigned by the High Commissioner's mandate, but also frequently prejudges issues which were agreed between the sides to be dealt with in direct negotiations between Israel and the Palestinians. Far from contributing to resumption of peaceful negotiations, Israel is concerned at the fact that the Report is being used to contribute to the

creation of further polarization. In light of the above, it seems regrettable, that the Report of the High Commissioner has in effect become a weapon to achieve political gain, rather than as an instrument which could contribute to the resolution of situation.

VII. LIST OF EXHIBITS

Together with this *Response*, Israel is also submitting the following Exhibit:

Exhibit I - Video: *Orientation to the Present Conflict*

EXHIBIT I: TABLE OF VIDEO CLIPS

Clip	Counter	Date	Source	Location	Description
CHILDREN					
1	00:50	8 October	Palestinian Satellite Channel	Jerusalem	Cry of a young child
2	01:40	27 October	CBS	Ramallah	Interview with a 16 year old youth
3	02:42	13 November	Tulkarm Local Television	Tulkarm	Interview with young children and lynch game
4	05:42	20 November	BBC	Gaza Strip	Children's military style camps
5	07:25	29 November	BBC	Gaza Strip	School song
INCITEMENT					
6	08:30	13 October	Palestinian Satellite Channel	Gaza Strip	Sermon of Dr. Ahmad Abu Halabiya, Zayed bin Sultan al Nahyan Mosque, Gaza Strip
7	11:53	30 October	Palestinian Satellite Channel		TV broadcaster calling for preparations to be made
VIOLENCE					
8	13:17	2 October	Palestinian Satellite Channel	IDF Post, Netzarim Junction, Gaza Strip	Violent protests against IDF post
9	14:12	3 October	NBC	Gaza Strip and Nablus	Palestinian violence
10	14:41	6 October	BBC	Jerusalem	Israeli policemen trapped in a police station in the Old City of Jerusalem
11	15:41	12 October	Al-Jazira Satellite Channel	Gaza Strip	Demonstration
12	16:16	12 October	BBC	Ramallah	Lynch
13	17:27	14 October	CNN	Gaza Strip	Violent Demonstration
14	18:09	26 October	CNN	Gaza Strip	Suicide bomber at Kfar Darom IDF military post
15	18:35	27 October	CBS	Ramallah	Interview with Marwan Barghouti

WEAPONS					
16	21:45	12 October	Al-Jazira Satellite Channel	Jelazun Refugee Camp	Illegal weapons, including anti-tank missile
17	22:05	12 October	Palestinian satellite Channel	Gaza Strip	Demonstration with illegal weapons
18	22:37	17 October	CBS	West Bank	Parade with illegal weapons
19	23:09	26 October	BBC	West Bank	Suicide bombers
DESECRATION OF HOLY SITES					
20	23:35	7 October	CNN	Joseph's Tomb	Desecration of Joseph's Tomb
TERROR					
21	24:22	20 October	BBC	Mount Eyval	Shooting on Israeli tourists
22	24:44	2 November	BBC	Jerusalem	Car bomb in Mahane Yehuda Market - Jerusalem
23	25:13	13 November	CNN	Ramallah	Shots at civilian car
24	25:48	20 November	IBA	Kfar Darom	Bombing of children's school bus
25	26:19	20 November	BBC	Gilo	Damage to private apartment in Gilo
26	26:41	22 November	BBC	Gaza Strip	Israeli civilian killed in his car at a junction near Kfar Darom
27	26:58	23 November	BBC	Hadera	Car bomb against bus in Hadera
28	27:30	23 November	BBC	Psagot	Shots in kitchen window of private apartment in Psagot
29	28:03	17 November	BBC	Sharm El-Sheikh	Statement of US President Clinton at the Sharm El-Sheikh Summit